



BRB No. 15-0311 BLA

PHYLLIS SIPLES)	
(Widow of DELBERT L. SIPLES))	
)	
Claimant-Respondent)	
)	
v.)	
)	
BRAZIL COAL & CLAY CORPORATION)	DATE ISSUED: 03/30/2016
)	
Employer-Petitioner)	
)	
DIRECTOR, OFFICE OF WORKERS')	
COMPENSATION PROGRAMS, UNITED)	
STATES DEPARTMENT OF LABOR)	
)	
Party-in-Interest)	DECISION and ORDER

Appeal of the Decision and Order and Order Denying Reconsideration of John P. Sellers, III, Administrative Law Judge, United States Department of Labor.

Philip J. Reverman, Jr. (Boehl Stopher & Graves, LLP), Louisville, Kentucky, for employer.

Rita Roppolo (M. Patricia Smith, Solicitor of Labor; Rae Ellen James, Associate Solicitor; Michael J. Rutledge, Counsel for Administrative Litigation and Legal Advice), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BUZZARD and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order and Order Denying Reconsideration (2015-BLA-5193) of Administrative Law Judge John P. Sellers, III, awarding benefits on a claim filed pursuant to the provisions of the Black Lung Benefits Act, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a survivor's claim filed on October 11, 2014.¹ Director's Exhibit 2. The district director issued a Proposed Decision and Order awarding survivor's benefits on October 27, 2014, and employer timely requested a hearing. Director's Exhibits 5, 6. The district director initiated interim benefits, and forwarded the claim to the Office of Administrative Law Judges for a hearing. Director's Exhibits 8, 9.

The administrative law judge issued his decision without holding a hearing, noting that Section 422(l) of the Act, 30 U.S.C. §932(l),² provides that a survivor of a miner who was determined to be eligible to receive benefits at the time of his or her death is automatically entitled to receive survivor's benefits without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l). The administrative law judge determined that claimant satisfied the eligibility criteria for automatic entitlement to benefits pursuant to Section 932(l). Accordingly, the administrative law judge determined that claimant is entitled to survivor's benefits as a matter of law.

Employer filed a motion for reconsideration which was denied by the administrative law judge on April 16, 2015. Applying the Board's holding in *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), the administrative law judge found that claimant was automatically entitled to survivor's benefits pursuant to Section 422(l) of the Act, 30 U.S.C. §932(l), even though the award of benefits in the underlying miner's claim is not yet final. Accordingly, the administrative law judge denied employer's request for reconsideration.

¹ Claimant is the widow of the miner. The miner filed a claim for benefits on June 6, 2011, and the district director issued a Proposed Decision and Order awarding benefits on May 31, 2012. Director's Exhibit 1. Employer requested a formal hearing in the miner's claim, and the case is currently pending in the Office of Administrative Law Judges. The miner died on September 28, 2014. Director's Exhibit 4.

² On March 23, 2010, amendments to the Act, applicable to claims filed after January 1, 2005, that were pending on or after March 23, 2010, were enacted. The amendments, in pertinent part, revive Section 422(l) of the Act, 30 U.S.C. §932(l), which provides that the survivor of a miner who was eligible to receive benefits at the time of his or her death is automatically entitled to survivor's benefits, without having to establish that the miner's death was due to pneumoconiosis. 30 U.S.C. §932(l).

On appeal, employer challenges the administrative law judge's application of Section 932(l) to this case. Claimant has not filed a response brief. The Director, Office of Workers' Compensation Programs (the Director), responds, urging the Board to vacate the administrative law judge's decision and remand this case for a hearing in the survivor's claim.³

The Board's scope of review is defined by statute. The administrative law judge's Decision and Order must be affirmed if it is rational, supported by substantial evidence, and in accordance with applicable law. 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keefe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

Employer challenges the administrative law judge's finding that claimant is derivatively entitled to survivor's benefits under amended Section 932(l), arguing that the miner was not receiving benefits pursuant to a final and effective award; that *Rothwell* is not applicable to this survivor's claim; and that the administrative law judge erred in awarding benefits in the survivor's claim prior to holding a hearing, as employer requested. Employer's Brief at 2-5.

The Director urges the Board to vacate the administrative law judge's decision, arguing that the administrative law judge erred in issuing a decision in the survivor's claim without holding a hearing. The Director maintains that because the parties did not agree to a decision on the record and no party filed a motion for summary judgment, the administrative law judge was obligated to hold a hearing before issuing his decision. Director's Brief at 2.

We agree with the Director. Upon a party's request, an administrative law judge must hold a hearing to address any contested issue of fact or law. *See* 33 U.S.C. §919(c), (d), as incorporated by 30 U.S.C. §932(a); 20 C.F.R. §§725.450, 725.451; *see Robbins v. Cyprus Cumberland Coal Co.*, 146 F.3d 425, 429, 21 BLR 2-495, 2-504 (6th Cir. 1998); *Cunningham v. Island Creek Coal Co.*, 144 F.3d 388, 390, 21 BLR 2-384, 2-388-89 (6th Cir. 1998). A full evidentiary hearing need not be conducted, however, if a party moves for summary judgment and the administrative law judge determines that there is no genuine issue as to any material fact and the moving party is entitled to the relief requested as a matter of law. *See* 20 C.F.R. §725.452(c). Additionally, "[i]f the

³ On July 23, 2015 employer filed a motion requesting that the appeal be held in abeyance until a decision was issued in the deceased miner's claim. In light of the Board's disposition of *Rothwell v. Heritage Coal Co.*, 25 BLR 1-141 (2014), the Board denied employer's motion to hold the appeal in abeyance. *Siples v. Brazil Coal & Clay Corp.*, BRB No. 15-0311 BLA (Oct. 21, 2015) (Order) (unpub.).

administrative law judge believes that an oral hearing is not necessary (for any reason other than on motion for summary judgment), the judge shall notify the parties by written order and allow at least thirty days for the parties to respond,” but if any party makes a timely request in response to the order, “the administrative law judge shall hold the oral hearing.” 20 C.F.R. §725.452(d). While the parties may waive the right to a hearing before an administrative law judge, such waiver must be in writing and filed with the Chief Administrative Law Judge or the administrative law judge assigned to hear the case. *See* 20 C.F.R. §725.461(a).

Because the parties did not agree to a decision on the record, and no party filed a motion for summary judgment, the administrative law judge was obligated to hold a hearing before issuing his decision. *See Robbins*, 146 F.3d at 428-30; 21 BLR at 2-504. Consequently, we vacate the administrative law judge’s finding that claimant is derivatively entitled to survivor’s benefits, and remand the case for the requested hearing unless one of the regulatory exceptions is found to be applicable.⁴ *See* 20 C.F.R. §§725.461(a); 725.452(c), (d); *Pukas v. Schuylkill Contracting Co.*, 22 BLR 1-69, 1-72 (2000) (holding that an administrative law judge must hold a hearing whenever a party requests one, unless the parties waive the hearing or a party requests summary judgment). On remand, employer may raise its additional arguments before the administrative law judge to be considered in the first instance.

⁴ Claimant will continue to receive interim benefits, paid by the Black Lung Disability Trust Fund. 20 C.F.R. §§725.420(a), 725.522(a).

Accordingly, the administrative law judge's Decision and Order and Order Denying Reconsideration are vacated, and the case is remanded for further consideration consistent with this opinion.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

GREG J. BUZZARD
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge